

May 27 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FILED

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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0176

JEFFERY ALLEN WEER,

Appellant,

-v-

STATE OF MONTANA,

Appellee.

**MOTION FOR ADDITIONAL
TIME IN WHICH TO FILE
THE TRANSCRIPT ON
APPEAL AND AFFIDAVIT**

State of Montana)
 ss
County of Missoula)

COMES NOW Appellant Jeffery Allen Weer and respectfully moves
this Court, pursuant to Rules 9(4) and 29, Mont. R. App. P., to grant him
additional time in which to file the transcript in this matter. As grounds for
his motion, Appellant states:

1 1. Mr. Weer filed a petition to reinstate his driving privileges in the
2 Fourth Judicial District Court on February 1, 2010.

3 2. At that time the District Court authorized Mr. Weer to proceed
4 without payment of fees.

5 3. On April 6, 2010, Mr. Weer submitted his Notice of Appeal to this
6 Court together with his Motion to Proceed Without Payment of the Filing
7 Fee. Student counsel for Mr. Weer contacted the court reporter with respect
8 to the transcript shortly after that date about preparing the transcript. The
9 court reporter confirmed the contact by letter on April 12, 2010.

10 4. On April 20, 2010, this Court denied Mr. Weer's Motion to
11 Proceed Without Payment. This Court provided that Mr. Weer would have
12 60 days in which to submit his filing fee. Mr. Weer was unable to pay his
13 fee until shortly before May 3, 2010, when he tendered the filing fee to this
14 Court.

15 5. Mr. Weer, however, thereafter lacked funds to pay for the
16 transcript of his hearing.

17 6. Mr. Weer expects to tender the fee to the court reporter no later
18 than May 28, 2010.

19 7. The Clerk of District Court forwarded the record in this case to

1 the Supreme Court on May 19, 2010. The transcript, however, has not yet
2 been prepared and was not included in the record.

3 8. It appears that the transcript was not prepared because the
4 student to whom this case was assigned was advised by the court reporter
5 that she was going to seek a 50 day extension to prepare the transcript. Mr.
6 Weer did not have the funds to pay for a transcript. Unfortunately, the
7 deadline for filing the motion for an extension of time to prepare the
8 transcript fell during the week of Mr. Weer's May 20, 2010, trial in Justice
9 Court. Counsel, that is, the student to whom the case was assigned, and
10 the undersigned, were focused on trial preparation. During the preceding
11 week, the undersigned was in San Francisco supervising another student's
12 oral argument before the United States Court of Appeals.

13 9. In short, it appears that the student expected a motion from the
14 court reporter and the court reporter expected a check from the client. But
15 for the confusion, the Appellant would have filed a timely motion for
16 extension in the District Court. Counsel understands that it was the duty of
17 counsel for the Appellant to file a timely motion.

18 10. Rule 9(3), Mont. R. App. P., provides that the District Court may
19 extend the time for filing the record but requires that motion to be filed within

1 40 days of the filing of the Notice of Appeal. Neither Rule 9 nor Rule 29
2 authorize the District Court to extend the time for filing the motion.

3 11. Rule 9(4), Mont. R. App. P., provides that the appellant may
4 move this Court for an extension of time "subsequent to one granted by the
5 district court" under Rule 9(3).

6 12. Rule 29 provides that this Court may for good cause shown,
7 suspend the requirements or provisions of the Rules of Appellate
8 Procedure. The District Court lacks the authority to suspend a provision of
9 the Rules, which is why this Motion is being made in this Court in the first
10 instance.

11 13. Counsel has contacted the attorney for the Appellee State of
12 Montana. The State does not object to this Motion.

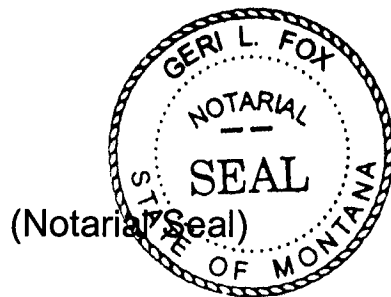
13 14. Wherefore, the Appellant, by counsel, prays that this Court
14 suspend the provisions of Rule 9(3), (4), and grant him an additional 30
15 days in which to file the transcript on appeal, unless the court reporter
16 moves for additional time.

17 RESPECTFULLY SUBMITTED: May 26, 2010
18
19

1
2 JEFFREY T. RENZ, Attorney for
Appellant Jeffery Weer

3 SUBSCRIBED AND SWORN TO BEFORE ME this 26th day of May,
4 2010.

5 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
6 official seal the day and year hereinabove first written.



Geri L. Fox - Geri C. Fox
Notary Public, State of Montana
Residing at Missoula, Montana
My Commission expires: 12-1-2010

CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing Motion by depositing said copies into the U.S. Postal Service, postage prepaid, addressed to the following:

Steve Bullock
Attorney General
Mark Mattioli
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401

DATED: May 26, 2010



JEFFREY T. RENZ